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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,058	09/30/2003	William F. Baxter III	EMC2-146PUS	5831

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EXAMINER

RAY, GOPAL C

ART UNIT	PAPER NUMBER
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2111

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,058

Applicant(s)

BAXTER, WILLIAM F.

Examiner

Gopal C. Ray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 3-6 is/are rejected.
7) ☒ Claim(s) 3 and 7 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 1-7 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The examiner believes that the title of the invention is unclear. A descriptive title indicative of the invention will help in proper indexing, classifying, searching, etc. See MPEP 606.01. However, the title of the invention should be limited to 500 characters.
3. The drawings filed on 2/9/04 are acceptable by the examiner for examination purposes. However, the Office of Initial Patent Examination (OIPE) reviews drawings initially for publication purposes. Direct any inquiries concerning drawing review for publication purposes to the Office of Initial Patent Examination (OIPE). See MPEP 507 for detail information.
4. Applicant should update the status of US Patent Applications disclosed on page 1 of the specification of invention by inserting US Patent No. and also deleting pending status if the application(s) is/are patented. Furthermore, the specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
5. Claims 1-7 are objected to minor informalities because applicant uses the phrases, "cross bar switch(es)" and "crossbar switch(es)" alternatively in claims. However, it would be appropriate to use --crossbar switch(es)-- in all occurrences. Furthermore, all claims should be revised carefully to eliminate all grammatical errors and antecedent basis problems.
6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

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are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2 and 4-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/675,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 2 of copending Application No. 10/675,038 contains every element of claims 1, 2 and 4-6 of the instant application and as such claims 1, 2 and 4-6 are obvious over claims 1 and 2 of copending Application No. 10/675,038. A later patent is not patentably distinct from an earlier patent claim if the later claim is obvious over the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Chilton, United States Patent Application Publication US 2002/0083270.

As per claim 1, Chilton teaches "a system interface, comprising a packet switching network" in Fig. 2; page 3 paragraph 30, main switch provides pathways for communication between proper sources and destinations in a network-like manner, i.e., routing data blocks, packets frames and cells; "a cache memory" on page 2, paragraph 32 on-board cache; "a plurality of directors, one portion of such directors being adapted for coupling a host computer/server ..." in Fig. 2, elements 54-A and 54-B; "connectivity of various elements through crossbar switches" in Fig. 3, element 68 and paragraph 36.

As per claim 2, Chilton teaches "wherein the packet switching network comprises the crossbar switches of directly and indirectly connected crossbar switches" in Fig. 3, element 68 and paragraph 36.

As per claims 4 and 5, Chilton teaches the added limitations of the claims in Fig. 6, element 66 and paragraph 50.

As per claim 6, the added limitation of the claim is rejected for the same reasons as discussed in the rejection of claim 2 above.

10. Dependent claims 3 and 7 are objected to as being dependent upon a rejected base claim on prior art, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an Examiner's Statement of Reasons for Allowance:

The claimed invention is directed to "a data storage system having crossbar switches in packet switching network(s)". The examiner has done complete search and found no prior art of record, alone or in combination, teaches or fairly suggests the additional limitations such as "the system interface having a plurality of packet switching networks, each one of the packet switching networks includes a plurality of crossbar switches which are connected directly and indirectly between packet switching networks" as claimed in claims 3 and 7. Therefore, the invention as claimed in dependent claims 3 and 7 is considered allowable because combinations recited in the claims are patentably distinguished from the prior art of record.

Any comments considered necessary by applicant must be submitted in response to this office action to avoid processing delays. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is urged to consider the references. However, the references should be evaluated by what they suggest to one versed in the art, rather than by their specific disclosure.

If applicants are aware of any prior art better than those are of record, they are required to bring the prior art to the attention of the examiner. Applicants are also reminded that each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to

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patentability as defined in 37 CFR 1.56. Applicants are advised to submit any information material to patentability in accordance with 37 CFR 1.97 and 1.98.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gopal C. Ray whose telephone number is (571) 272-3631. The examiner can normally be reached on Monday - Friday from 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart, can be reached on (571) 272-3632. The fax phone number for this Group is (571) 273-8300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [mark.rinehart@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to TC central telephone number is (571) 272-2100.

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Moreover, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lastly, paper copies of cited U.S. Patents and Patent Application Publications ceased to be mailed to applicants with office actions as of June 2004. Paper copies of Foreign Patents and Non-Patent Literature will continue to be included with office actions. These cited U.S. Patents and Patent Application Publications are available for download via Office's PAIR. As an alternate source, all U.S. Patents and Patent Application Publications are available on the USPTO web site (www.uspto.gov), from the office of Public Records and from commercial sources. Applicants are referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 for information on this policy. Requests to restart a period for response due to a missing U.S. Patent or Patent Application Publications will not be granted.

Gopal C. Ray
GOPAL C. RAY
PRIMARY EXAMINER
GROUP 2100